

Notice of Allowability

Application No.

09/927,933

Applicant(s)

LEROY ET AL.

Examiner

Scott D. Priebe, Ph.D.

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 04 April 2005.
2. ☒ The allowed claim(s) is/are 40,41,46,47 and 51-56.
3. ☒ The drawings filed on 13 August 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 08/809,110.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S COMMENT

Claim 40 has been amended to recite that the CD4 extracellular domain is fused to an antibody or part of an antibody against a pathogen or tumor cell that retains its antigen binding region. Applicant simply states that the change is for grammatical purposes and is supported throughout the original specification and claims. The amendment is not merely cosmetic, and substantially narrows the scope of the claims. Previously, the claims embraced fusions to any part of an antibody, including a constant region, i.e. lacking the antigen binding regions as in original claims 27 and 28. The specification describes a wide array of products that are not embraced by the instant claims, one example is that of original claims 27 and 28. Other disclosed products to be encoded by an adenovirus include multimeric proteins in general, antibodies or parts of antibodies unmodified by non-antibody polypeptides, antibodies fused to toxic polypeptides or immunopotentiating polypeptides other than CD4 domains. The original claims do not include a claim of the scope of instant claim 40 and its dependent claims. The claim amendment is supported by the original specification, but not throughout the specification as indicated by Applicant.

It is Applicant's responsibility to indicate how the original disclosure supports a claim amendment and specifically where in the original disclosure such support may be found. See MPEP 714.02, last sentence of the third paragraph from the end, and MPEP 2163.06 (I), last sentence. Specific support for the amendment may be found in the specification at page 7, line 30, to page 8, line 38, (especially page 8 lines 22-32) and page 10, lines 4-20, where fusion of the nucleotide sequence encoding the immunopotentiating polypeptide, e.g. the CD4 domains, to the

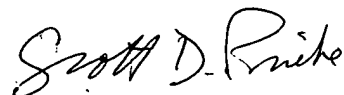
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5' end of the antibody coding sequence is equivalent in meaning to the CD4 domains being fused to the N-terminus of the antibody portion of the modified antibody encoded by the vector.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott D. Priebe, Ph.D. whose telephone number is (571) 272-0733. The examiner can normally be reached on M-F, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott D. Priebe, Ph.D.
Primary Examiner
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